

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAINE

IRVIN W. McKAY and  
CINDY L. McKAY,

Plaintiffs,

vs.

FAY SERVICING, LLC,

Defendant.

Civil Action No. 1:23-cv-00361-JDL

**DEFENDANT FAY SERVICING, LLC'S MOTION TO REMAND**

Defendant Fay Servicing, LLC ("Fay") submits this Motion to Remand whereby Fay respectfully requests that this Court remand this case to the Penobscot Superior Court where it was originally filed by Plaintiffs Irvin and Cindy McKay (collectively "Plaintiffs"). In support thereof Fay states as follows:

**BACKGROUND AND REQUESTED RELIEF**

1. Plaintiffs commenced this action in the Penobscot (Maine) Superior Court ("State Court") on August 21, 2023 naming Fay as the lone defendant. The case in State Court was styled *Irvin W. McKay et al. v. Fay Servicing, LLC*, Docket No. PENS-CIV-2023-00116.

2. After Plaintiffs filed an Amended Complaint in State Court on September 20, 2023, Fay removed the action to this Court on September 25, 2023. *See* Docket [ECF No. 1].

3. Thereafter, on October 3, 2023, Fay filed a Motion to Dismiss Counts II, III, and IV of Plaintiffs' Amended Complaint and a Motion to Strike certain paragraphs contained within Plaintiffs' Amended Complaint. *See* Docket [ECF Nos. 8 and 9]. Plaintiffs ultimately filed an Opposition to Fay's Motion to Dismiss and Strike and a Motion to Amend their Amended

Complaint. *See* Docket [ECF Nos. 16 and 17]. Fay then filed a Reply thereto. *See* Docket [ECF No. 18]. Fay's Motion to Dismiss and Strike is currently pending before this Court.

4. On October 4, 2023, this Court reset the deadline for all parties to file a Diversity Disclosure Statement pursuant to Fed. R. Civ. P. 7 to October 6, 2023. *See* Docket [October 4, 2023 entry].

5. As requested by the Court, Fay filed its Diversity Disclosure Statement on October 6, 2023. Meanwhile, Plaintiffs filed their Diversity Disclosure Statement on October 11, 2023. *See* Docket [ECF Nos. 10 and 11].

6. On December 12, 2023, this Court issued an Order requiring Fay to file an Amended Diversity Disclosure Statement by December 26, 2023. As for its reasoning, this Court stated that Fay's Diversity Disclosure Statement filed on October 6, 2023 did not comply with the requirements of Fed. R. Civ. P. 7.1(a)(2). *See* December 12, 2023 Order [ECF No. 19].

7. Fay then filed a Motion to Seal its Diversity Disclosure Statement [ECF No. 20] on December 21, 2023 and further filed its Amended Diversity Disclosure Statement under seal. Within its Motion to Seal, Fay requested that the Court allow Fay to file its Diversity Disclosure Statement under seal to protect the privacy interests Fay Financial, LLC (Fay's single member) and Fay Financial, LLC's individual members. Plaintiffs filed a response with this Court stating that they did not oppose Fay's Motion to Seal. *See* Docket [ECF No. 21].

8. On January 9, 2024, this Court denied Fay's Motion to Seal its Diversity Disclosure Statement finding that Fay's interest in protecting the privacy of its members did not outweigh the "public policy...favoring public access to information that is integral to a court's exercise of jurisdiction." *See* Order on Defendant's Motion to Seal Disclosure Statement [ECF No. 23], p. 2.

In its Order, this Court also ordered Fay to file an amended Diversity Disclosure Statement complying with Fed. R. Civ. P. 7.1(a)(2) by January 23, 2024. *See id.*, at p. 3.

9. In response to this Court’s January 9, 2024 Order, Fay filed its Amended Diversity Disclosure Statement on January 22, 2024. Fay’s Amended Diversity Disclosure Statement withheld the individual names of the members of Fay Financial, LLC (the single member of Fay), but did provide the citizenships of each member. *See* Docket [ECF No. 24].

10. On January 22, 2024, this Court ordered Fay to file a further Amended Diversity Disclosure Statement because Fed. R. Civ. P. 7.1 “requires that a diversity disclosure statement ‘name...every individual or entity whose citizenship is attributed to that party or intervenor.’” *See* Docket [January 22, 2024 entry] (*quoting* Fed. R. Civ. P. 7.1). Accordingly, Fay is now required to file an Amended Diversity Disclosure Statement by February 1, 2024. *Id.*

11. In response to this Court’s January 22, 2024 Order, to protect the privacy interests of Fay Financial, LLC (Fay’s single member) and its individual members, Fay respectfully requests that this Court remand this case back to Maine State Court where it was originally filed by Plaintiffs. The undersigned counsel is seeking to protect the identity of the individual members from unnecessary litigation, which has absolutely nothing to do with this case.

12. In support thereof, Fay states that remanding this case back to State Court will not prejudice Plaintiffs, as the case would be remanded back to their originally chosen forum, Penobscot Superior Court and all pending motions may be heard by that court.

13. Fay further states that this Motion is made in good faith and not for the purposes of delay.

### **CONCLUSION**

Based on the foregoing, in order to protect the privacy interests of Fay Financial, LLC and its individual members, Fay respectfully requests that this Court remand this action back to Penobscot Superior Court where it was originally filed by Plaintiffs.

Respectfully submitted,

FAY SERVICING, LLC,

By its attorney,

/s/ Kevin P. Polansky

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Dated: January 31, 2024

### **CERTIFICATE OF SERVICE**

I, Kevin P. Polansky, hereby certify that on January 31, 2024, I caused a copy of the foregoing document to be served upon the following parties and counsel of record by email with paper copies to follow by mail:

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/s/ Kevin P. Polansky

Kevin P. Polansky